

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

RICHARD WHITLEY, CAROLETA M. DURAN,)
TERRY J. KOCH, MARK D. GRANDY, JOHN)
M. GATES, and SCOTT NEWELL, on behalf of)
themselves and those similarly situated,)

Plaintiffs,)

v.)

J.P. MORGAN CHASE & CO.; JPMORGAN)
CHASE BANK N.A.; J.P. MORGAN)
INVESTMENT MANAGEMENT INC., aka J.P.)
MORGAN ASSET MANAGEMENT; and)
JPMORGAN RETIREMENT PLAN SERVICES)
LLC,)

Defendants.)

Case No. 12-cv-2548
The Honorable John G. Koeltl

**DECLARATION OF MICHAEL M. MULDER IN SUPPORT OF PLAINTIFFS'
RESPONSE TO DEFENDANTS' SUPPLEMENTAL AUTHORITY**

I, Michael M. Mulder, declare as follows:

1. I am an attorney with the law firm of Meites Mulder, attorneys of record for the Whitley Plaintiffs. I am an attorney in good standing and have been admitted to appear before this Court *pro hac vice*. See Dkt. 24.

2. Except as otherwise indicated, I have personal knowledge of the facts set forth in this Declaration and, if called and sworn as a witness, I would competently testify to these facts.

3. I respectfully submit this Declaration in Support of Plaintiffs' Response to Defendants' Supplemental Authority (Dkt. 68).

4. Plaintiffs' Response to Defendants' Supplemental Authority calls certain extrinsic evidence to this Court's attention. Response fn. 1, p. 3 and Section III.

5. Most of that evidence (all but Exhibit 2) was obtained in March 2013 after the filing of the First Amended Complaint on October 16, 2012. That evidence was not available to Plaintiffs prior to the filing, because it was subject to a protective order.

6. On August 15, 2012, two months prior to filing the First Amended Complaint on October 16, 2012, Plaintiffs sought discovery of depositions and documents from the JPM Defendants in the *American Century Investment Management, Inc. v. J.P. Morgan Invest Holdings, LLC* Arbitration (Case No. 58 148 Y 00220 09) (“ACI litigation”).

7. Because of the protective order between the parties to that litigation, it took time to obtain permission from American Century to allow production of the documents in this litigation subject to the Stipulation of Confidentiality entered by this Court. (Dkt 40).

8. Plaintiffs filed their First Amended Complaint on October 16, 2012. In paragraph 64, Plaintiffs alleged the following:

The result of recent litigation and related arbitration between JPM and one of its business partners is also indicative of the problematic nature of JPM’s Stable Value Funds. One of JPM’s erstwhile stable value sector business partners, American Century Investments, recently won a \$373 million arbitration judgment against one of the JPM entities because, among other things, that entity misrepresented the risk profile of the investment funds at issue in that case including the JPM Stable Value Funds at issue here.

9. On October 29, 2012, Plaintiffs’ counsel Michael Mulder wrote a letter to American Century’s counsel, Randall Hendricks, asking his client to allow the documents Plaintiffs were seeking from JPM Defendants to be produced under the protective order here. On December 20, 2012, Mulder sent ACI’s counsel a further follow-up request. On January 7, 2013, ACI’s counsel sent written permission agreeing to the production, which was forwarded to Defendants’ counsel on January 9, 2013.

10. On March 4, 2013, some of the documents Plaintiffs requested were produced by Defendants, including the depositions and deposition exhibits of JPM's key Stable Value managers taken in the *American Century* litigation (Am. Comp. ¶ 64). From that discovery production are exhibits referenced in Plaintiffs' Response to Defendants' Supplemental Authority, listed below, with the exception of Exhibit 2.

11. Submitted herewith is a true and correct copy of:

Exhibit 1 (under seal)	<i>JPM-WHITLEY 003742 at 003767 and 003816</i> 05/12/2010 Deposition excerpts of Victoria Paradis
Exhibit 2 (under seal)	<i>JPM-WHITLEY 002018</i> 12/31/2009 "Portfolio Characteristics" from Hospira 4Q09 performance report
Exhibit 3 (under seal)	<i>JPM-WHITLEY 004904-004917</i> January 2010 Victoria Paradis Letter to Plan Sponsors (Chappelear <i>ACI v. JPM</i> deposition exhibit 409a)
Exhibit 4 (under seal)	<i>JPM-WHITLEY 004230</i> 04/19/2006 Email from Paradis to Michael Poe (Paradis <i>ACI v. JPM</i> deposition exhibit 336D)
Exhibit 5 (under seal)	<i>JPM-WHITLEY 004922-004940</i> JPM Asset Mgmt Final Stable Value Risk Management Package (Chappelear <i>ACI v. JPM</i> deposition exhibit 470)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 30, 2013
in Chicago, Illinois

/s/ Michael M. Mulder

Michael M. Mulder
MEITES MULDER

CERTIFICATE OF SERVICE

I, Michael M. Mulder, hereby certify that on this 30th day of April 2013, I electronically filed **DECLARATION OF MICHAEL M. MULDER IN SUPPORT OF PLAINTIFFS' RESPONSE TO DEFENDANTS' SUPPLEMENTAL AUTHORITY** using the United States District Court for the Southern District of New York's CM/ECF system, which will provide service of such filings via email to all counsel of record in this action:

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